

## Article - Tax - General

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§8–205.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) “Foreign person” means:

1. an individual who is not a resident of the United States;

2. a company, partnership, or trust that is not organized under the laws of the United States or of a state; and

3. a foreign branch of a company organized under the laws of the United States or of a state.

(ii) “Foreign person” includes:

1. a foreign government or any of its units;

2. an international organization or any of its agencies;

3. an international banking facility; or

4. a company or partnership that is not organized under the laws of the United States or of a state and that has an office and activities within an approved foreign trade zone.

(3) “International banking facility” means a financial institution that:

(i) qualifies as an international banking facility under the laws of the United States or under regulations that the Board of Governors of the Federal Reserve System adopts;

(ii) is located in a county where an approved foreign trade zone is located; and

(iii) 1. makes, arranges for, places, or services a loan to a foreign person for use outside the United States or in an approved foreign trade zone in the United States; or

2. derives earnings from a foreign exchange trading or hedging transaction that is related to a loan described in item 1 of this item.

(4) “Liability” means the total liabilities shown in the records of an international banking facility.

(b) In computing taxable net earnings, an international banking facility shall:

(1) deduct the qualifying amount computed under subsection (c) of this section to the extent that the amount is not deductible in computing its federal taxable income; or

(2) add any loss computed under subsection (c) of this section to its taxable net earnings.

(c) (1) To compute the qualifying amount allowed under this section, an international banking facility shall determine its gross earnings derived, directly or indirectly, from any foreign exchange trading or hedging transaction that relates to making, arranging for, placing, or servicing a loan to a foreign person if:

(i) substantially all of the proceeds of that loan are used outside the United States; or

(ii) all of the proceeds are used in an approved foreign trade zone by:

1. a foreign individual;

2. an individual residing in the United States; or

3. a foreign branch of a company that is organized under the laws of the United States or of a state, is not a bank, and has at least 80% ownership or control of the foreign branch.

(2) From the gross earnings computed under paragraph (1) of this subsection, an international banking facility shall subtract all deductions or expenses, directly or indirectly, related to those gross earnings.

(3) From the adjusted gross earnings calculated under paragraph (2) of this subsection, an international banking facility shall subtract the product of multiplying the adjusted gross earnings by a fraction:

(i) the numerator of which is the fiscal year average amount of liability that was neither owed to nor received from a foreign person; and

(ii) the denominator of which is the fiscal year average amount of liability that was owed to or received from any person.

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